

# CONTRACT LAW DIVISION

Office of Assistant General Counsel for Finance and Litigation

Biweekly Report—Period Ending May 06, 2000

## **ETE Inc. v. United States—98 Civ. 6946 (E.D.N.Y) and GSBGA 15253-ADR**

We have filed an "Offer of Judgement" pursuant to Rule 68 and have scheduled depositions in New York during June. The offer was made in an amount equal to the last government offer made at the conclusion of the ADR proceeding. This rule, that exists both in the Federal District Courts and the Court of Federal Claims, allows the offeror, after a trial that results in a judgement less than the offer made, to petition the Court for certain litigation costs expended after the offer is made. No such rule exists in the GSBGA. (Ken Lechter)

## **Austin Co. Consolidated Claims**

A status conference was held with Judge Goodman, and it was agreed that the parties would attempt non-binding facilitated mediation/neutral evaluation for these claims, where a final contracting officer's decision has not been rendered. We have selected for the first presentation one discreet issue having an alleged value of approximately \$700,000 and involving the question of whether certain work was within or without the scope of this design-build contract. Judge Goodman will be coming to NIST next week for a "view" of the facility, at which time this first presentation will be scheduled. (Ken Lechter)

## **Expert Choice, Inc. (Agency-Level Protest)**

This protest challenges the agency's request for clarification relating to submission of comparable labor categories to those developed by the agency for the purpose of COMMITS price evaluation. Protestor claims that this is a new requirement and is not reasonable without additional discussions or clarifications. ECI requests a ruling: (1) allowing resubmission of proposals consistent with the "new" criteria; and (2) full compliance with the GAO decision to allow oral presentations. The agency decision is due on June 2, 2000. (Terry H. Lee).

## **GFDL Supercomputer**

A prospective offeror has requested a 60-day extension to the proposal due date. However the schedule, calling for award this fiscal year, will not accommodate an extension of nearly that length. We are posting the question to the web site in an effort to determine whether other offerors also require an extension before responding. In response

to another question GFDL is revisiting the LTD requirements and will make any needed schedule adjustments or LTD changes. One prospective offeror has informed us that it will not submit a proposal in that its product development cycle will not permit it to submit a competitive proposal. (Mark Langstein)

## **GOES**

Combining business with spectacle, CLDer Mark Langstein went to Cape Canaveral Florida to view the dramatic, and successful, nighttime launch of GOES L. The 3:00 am launch time did not deter Mark from attending either pre-launch activities or post-launch festivities. Thank you Gary Davis and staff for your hospitality. Continuing on from the Cape, Mark attended a meeting outside of Tampa to discuss the future of the troubled NEXRAD Temporary Power Supply program. The TPS units have been failing at a rate far in excess of the contractually required five-year MTBF. The two days of meetings have ended successfully, for now, with contractor Powerware agreeing to test a battery solution not utilizing the failure-prone bearings.

## **CLD "Time to Complete"—2.0 Days**

### **Actions by Contract Law Division during Period from 04/23/2000 05/06/2000**

Bureau	Received	Completed
BXA	1	1
NIST	5	5
NOAA	11	12
OIG	1	1
PTO	2	2
<b>Totals</b>	<b>20</b>	<b>21</b>

Contract Law Division—Client Workload  
Period Ending 05/06/2000

